IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1237 OF 2004

Shri. Raghunath G. Kalekar & Ors. ...Petitioners

V/s.

The Registrar (Inspection) & Ors. ..Respondents

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Miss Vaijayyanti R. Kalekar, for the petitioners.

Mrs. A.S. Pai, A.P.P. for the respondents

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CORAM: H.L. GOKHALE AND
SMT. V.K. TAHILRAMANI, JJ.

DATE : 16TH AUGUST, 2004

P.C..

1. Heard Miss Kalekar for the petitioners. Mrs. Pai appears for the respondents.

2. The petition raises the grievances with respect to the circular dated 22.3.2003 issued by the 1st respondent. The circular records that in private complaint the practice of letting off the accused persons without execution of any bond has developed. This creates difficulty in their remaining present at a later occasion during the course of the trial. The circular therefore, directs the Magistrates that a blanket practice of not taking any kind of bond, should not be followed.

3. The grievance of the petitioners is that the circular was being pressed into service in summons case No.51/2004 which is filed in the Court of Judicial Magistrate at Dapoli, District Ratnagiri against the petitioners. The learned counsel for the petitioners points out that the first petitioner is a retired Officer from Armed Forces and the other petitioners are his family members. The petitioners have sufficient landed properties in the village, however, as a matter of principle, it is submitted that such bond should not be insisted upon. It is further submitted that the respondent No.2 is an influential person in the village and therefore, it has become difficult for them to obtain sureties.

4. We see the predicament expressed by the petitioners, at the same time we find that the circular does not give a blanket direction that in each and every matter, the accused should be insisted upon to furnish personal bond and surety. The petition seeks direction to quash and set aside this circular. However, Miss. Kalekar, the learned counsel for the petitioner submitted that a proper clarification with respect to this circular will suffice the purpose. In the facts and circumstances and having gone through the circular, the position is very clear that this circular does not give any absolute mandate but only impresses

upon the Magistrate about desirability of taking bonds. This circular in terms states that the discretion of the Magistrate under the provisions under Sections 88 and 436 of Cr.P.C. is not taken away. This being so, in an appropriate case it will certainly be open to the Magistrate not to insist for any kind of personal bond or surety.

5. The petitioners were asked to appear before the Magistrate on 13.7.2004 and they were also asked to bring appropriate and sound sureties. If the petitioners have applied for exemption from furnishing personal bond or sureties by moving an application, the learned Magistrate will decide that application in terms of the directions given in this order.

6. With the above directions, this petition is disposed of.

7. Authenticated copy of this order be made available to the parties.